

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
INFOTOPIA, INC., *
* CASE NUMBER 02-44356
*
Debtor. *
*

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MARC P. GERTZ, TRUSTEE, *
*
Plaintiff, *
*
vs. * ADVERSARY NUMBER 05-4026
*
INFOTOPIA, INC., et al., *
*
Defendants. *
*

M E M O R A N D U M O P I N I O N

This cause is before the Court on the Motion to Dismiss Counts 1, 2, and 3 of the Trustee's Complaint ("Motion to Dismiss") filed by Defendant Ron Fricke ("Defendant Fricke"). The Complaint was brought against Defendant Fricke and various co-workers by Trustee Marc P. Gertz (the "Trustee") to Avoid and Recover Fraudulent Transfers, Conversion; Breach of Fiduciary Duties (the "Complaint"). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; 11 U.S.C. §§ 548, 544, and 550. The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

FACTS

Defendant Fricke's employer, Infotopia, Inc (the "Debtor"), was subject to an involuntary petition for relief under Chapter 11 of Title 11 of the United States Code on September 30, 2002. The Chapter 11 case was subsequently converted for relief under Chapter 7 of Title 11 on February 4, 2003. This adversary proceeding was filed on February 4, 2005 by the Trustee in order to avoid and recover alleged: (i) fraudulent transfers to Defendants, (ii) conversion by Defendants, and (iii) breach of fiduciary duties on behalf of Defendants in relation to their management of Debtor's day-to-day business operations.

The Complaint was brought against Defendant Fricke, eight named co-workers, ten "John Doe" defendants and several insurance companies. Defendant Fricke timely filed a Motion to Dismiss on April 7, 2005. On April 29, 2005, the Trustee filed a one paragraph pleading, styled as Objection of Marc P. Gertz, Infotopia, Inc. Bankruptcy Trustee to Defendants [sic] Ron Fricke's Motion to Dismiss and Request for Leave to File a Supplemental Response in Support of Objection and Request for Hearing ("Objection"). This filing included a single sentence stating the Trustee "objects" to the Motion to Dismiss and requests leave to file a "supplemental memorandum" in support of the Objection. The pleading also asked that the matter be set for hearing.

ANALYSIS

The filing of a responsive pleading is governed by Local Bankruptcy Rule 9013-1. The rule provides, in relevant part: "A motion or application tendered for filing *shall* be accompanied by a *memorandum of support*[" Bankruptcy Rule 9013-1(a) (emphasis added). The rule further provides that: "Unless otherwise ordered by the Court, a response memorandum *must* be filed if the relief sought by a motion or application is opposed. . . . The response shall state with particularity the reasons that the motion or application is opposed." Bankruptcy Rule 9013-1(b) (emphasis added). Finally, the rule states: "Failure to file a response on a timely basis may be cause for the Court to grant the motion or application as filed without further notice." Bankruptcy Rule 9013-1(d).

The Objection filed by the Trustee does not comport with L.B.R. 9013-1. There is no need for the Court to grant leave to file a memorandum in response to the Motion to Dismiss; in fact, L.B.R. 9013-1 specifically dictates that a response memorandum *must* be filed if the motion is opposed. As a consequence, the Motion to Dismiss shall be considered unopposed. Failure to file an adequate response is sufficient cause for the Court to grant the Motion to Dismiss.

Even if the Trustee's filing of April 29, 2005 is liberally interpreted to be a response memorandum (as required by L.B.R. 9013-1(b)), the Objection lacks any factual basis to

withstand the Motion to Dismiss.

Therefore, the Court grants Defendant Fricke's Motion to Dismiss.

An appropriate order will follow.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

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Defendants.	*	
	*	

O R D E R

For the reasons set forth in this Court's Memorandum Opinion entered this date, the Court grants the Motion to Dismiss the Trustee's Complaint as to Defendant Ron Fricke.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE